

EXHIBIT 10

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4 - - -
5

6 IN RE: NATIONAL : HON. DAN A.
7 PRESCRIPTION OPIATE : POLSTER
8 LITIGATION :
9 :
10 APPLIES TO ALL CASES : NO.
11 : 1:17-MD-2804
12 :
13

14 - HIGHLY CONFIDENTIAL -
15

16 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW
17

18 VOLUME II
19 - - -
20

21 April 18, 2019
22 - - -
23

24 Continued videotaped
deposition of THOMAS PREVOZNIK, taken
pursuant to notice, was held at the law
offices of Williams & Connolly, 725 12th
Street, Washington, D.C., beginning at
8:16 a.m., on the above date, before
Michelle L. Gray, a Registered
Professional Reporter, Certified
Shorthand Reporter, Certified Realtime
Reporter, and Notary Public.

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 GOLKOW LITIGATION SERVICES
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1 MR. FARRELL: Did I make a
2 mistake? Sorry I got that
3 backwards.

4 Number 4 is from March 13,
5 1971. It's Volume 36, Number 50,
6 from the Federal Register.

7 Plaintiffs' Exhibit 5 is
8 from April 24, 1971, from the
9 Federal Register, Volume 36,
10 Number 80.

11 (Document marked for
12 identification as Exhibit
13 DEA-Prevoznik-P-5.)

14 MR. FARRELL: And we
15 referenced Paragraph 6 at the top
16 of the first page.

17 (Document marked for
18 identification as Exhibit
19 DEA-Prevoznik-P-6.)

20 MR. FARRELL: Plaintiffs' 6
21 is another slide that's been used
22 in the McKesson depositions of
23 Nate Hardle, 30(b)(6). And it's
24 simply a demonstrative exhibit of

1 21 C.F.R. 1301.74.

2 (Document marked for
3 identification as Exhibit
4 DEA-Prevoznik-P-7.)

5 MR. FARRELL: Plaintiffs' 7
6 is a document produced by Cardinal
7 Health in discovery and MDL2804.

8 It begins with Bates stamp
9 CAH_MDL2804_01465723, and it
10 extends all the way through
11 CAH_MDL2804_01465734.

12 It's Plaintiffs' Exhibit 7.
13 And I'll represent that it was
14 also in the government reliance
15 materials that they produced
16 yesterday at deposition.

17 That brings us up-to-date
18 for all of the demonstrative
19 exhibits that were used so far on
20 the record.

21 MR. STEPHENS: Thank you.

22 MR. FINKELSTEIN: So should
23 we go off the record and bring the
24 witness back?

1 MR. FARRELL: Yes.

2 MS. MAINIGI: Yes.

3 THE VIDEOGRAPHER: 2:51. We
4 are off the video record.

5 (Brief pause.)

6 THE VIDEOGRAPHER: 2:55. We
7 are on the video record.

8 MR. FARRELL: More
9 housecleaning. Earlier today we
10 referenced -- more housecleaning.

11 Earlier we referenced a
12 position taken by Cardinal Health
13 in a pleading. It's United States
14 District Court for the -- United
15 States District Court for the
16 District of Columbia, Cardinal
17 Health versus Eric Holder, Case
18 Number 1:12-cv-00185-RBW.

19 It is Document 16 in the
20 pleading index, filed on
21 February 13, 2012. It's
22 previously been circulated, I'll
23 show it to you, even though it's
24 not being admitted through this

1 witness.

2 For the record that's the
3 document that I referenced.

4 (Document marked for
5 identification as Exhibit
6 DEA-Prevoznik-P-8.)

7 MR. FARRELL: Same thing
8 with earlier today, I referenced
9 what's being marked now -- that
10 was Plaintiff 8. This is going to
11 be Plaintiff 9.

12 (Document marked for
13 identification as Exhibit
14 DEA-Prevoznik-P-9.)

15 MR. FARRELL: And this is a
16 single page from a document with a
17 Bates stamp MCK MDL 00409239. And
18 again, this is a document that was
19 produced by McKesson in discovery
20 that I referenced and asked
21 questions about it with this
22 witness.

23 MR. FINKELSTEIN: Are you
24 going to provide me with copies?

1 MR. FARRELL: Yes.

2 Did you get a copy of the
3 NWDA policy?

4 MR. FINKELSTEIN: Thanks.

5 MR. FARRELL: That's
6 previously been made.

7 MR. FINKELSTEIN: Just wait
8 for a question.

9 BY MR. FARRELL:

10 Q. Mr. Prevoznik, the next
11 document I'm going to reference is
12 actually in your notebook.

13 A. Okay.

14 Q. In the reliance materials
15 that you disclosed yesterday.

16 And it's the -- from the
17 1996 diversion investigators manual.
18 Section 5126.

19 MR. FARRELL: Bring it up on
20 the screen. And pass it down.

21 Here is some extra copies in
22 case people didn't bring their
23 notebooks back.

24 BY MR. FARRELL:

1 Q. On behalf of the DEA, do you
2 recognize this document?

3 A. Yes, I do.

4 Q. What is it?

5 A. It is part of our diversion
6 investigators manual.

7 Q. What does that mean?

8 What -- what is a diversion
9 investigators manual?

10 A. It's a manual that breaks
11 down our responsibilities, our job.
12 It -- it covers the whole gambit of what
13 registration is -- what a registrant is,
14 down to record reports, requirements. It
15 goes through our scheduled
16 investigations, pre-registration
17 investigations, how to -- conducting
18 audits when we do the scheduled
19 investigation, what topics, what areas to
20 cover.

21 It covers controlled
22 substances -- controlled substances. It
23 also covers the chemicals, List I
24 chemicals, the requirements of that, as

1 well as preregistration investigations of
2 chemicals, applicants.

3 It covers the -- the gambit
4 of exactly what our job is.

5 Q. Are these -- in this page
6 that we're showing here, the bottom
7 right-hand corner is a Bates stamp. Can
8 you read that Bates stamp?

9 A. 00025231.

10 Q. Okay. Is this a document
11 produced by the DEA in this litigation at
12 the request of counsel for the diversion
13 investigators manual from 1996?

14 MR. FINKELSTEIN: Scope.

15 We'll stipulate that we
16 produced it.

17 MR. FARRELL: Thank you.

18 BY MR. FARRELL:

19 Q. So the title of Section 5126
20 says what?

21 A. Requirement to report
22 suspicious orders.

23 Q. Would you read the first
24 sentence of the first paragraph aloud?

1 A. "Registrants are required to
2 inform DEA of suspicious orders in
3 accordance with 21 C.F.R. 1301.74(b).
4 DEA field offices are not to approve or
5 disapprove supplier shipments of
6 controlled substances. The
7 responsibility for making the decision to
8 ship rests with the supplier. No (sic)
9 exception to this occurs when a supplier
10 complies with a DEA field office's
11 request to initiate a controlled delivery
12 of controlled substances."

13 Q. Is this consistent with the
14 guidance provided by the DEA to
15 registrants?

16 MS. MAINIGI: Objection.

17 THE WITNESS: Yes.

18 MR. FARRELL: Now, if you'll
19 go down to -- keep going.

20 BY MR. FARRELL:

21 Q. Beginning with
22 "registrants," could you begin reading,
23 please.

24 A. "Registrants who routinely

1 report suspicious orders, yet fill these
2 orders, with reason to believe they are
3 destined for the illicit market, are
4 expressing an attitude of
5 irresponsibility that is detriment to the
6 public health and safety as set forth in
7 21 U.S.C. 823 and 824."

8 Q. Thank you. Is this
9 consistent with the guidance provided by
10 the DEA to registrants?

11 MS. MAINIGI: Objection to
12 form.

13 MR. FINKELSTEIN: Objection.
14 Form.

15 THE WITNESS: Yes.

16 BY MR. FARRELL:

17 Q. So this is the official
18 policy of the DEA as of 1996, agreed?

19 A. Yes.

20 Q. Is this the position that
21 the DEA was instructing its diversion
22 investigators to take when looking into
23 cases involving the distribution of
24 controlled substances?

1 MS. MAINIGI: Objection to
2 form.

3 MR. FINKELSTEIN: Vague as
4 to time.

5 BY MR. FARRELL:

6 Q. In 1996.

7 A. Yes.

8 Q. Are you aware of any
9 deviation or change from that position by
10 the DEA since 1996?

11 MS. MAINIGI: Objection.

12 THE WITNESS: No.

13 BY MR. FARRELL:

14 Q. So the next sentence is just
15 a recitation of the suspicious order
16 definition. What I'd like you to do is
17 go down to where it starts, "The supplier
18 can determine," and begin reading aloud.

19 A. "The supplier can determine
20 whether the order is excessive by
21 checking their own sales and establishing
22 the average amount of controlled
23 substances shipped to registrants of the
24 same apparent size in a particular

1 geographic area."

2 Q. Read the next sentence,
3 please.

4 A. "If the customer exceeds
5 this threshold, the request should be
6 viewed as suspicious."

7 Q. Is this consistent with the
8 guidance that the DEA provided to
9 registrants since at least 1996?

10 MS. MAINIGI: Objection to
11 form.

12 THE WITNESS: Yes.

13 BY MR. FARRELL:

14 Q. Is this the position that
15 the DEA -- strike that.

16 The reading of this seems to
17 indicate that if you exceed an average
18 amount, if a customer exceeds an average
19 amount -- let me start over.

20 This directive that DEA had
21 internally seems to indicate that it
22 considered that an order in excess of a
23 customer's average amount should be
24 deemed suspicious. Is that a fair

1 depiction?

2 A. Could you please --

3 MS. MAINIGI: Objection to
4 form.

5 THE WITNESS: Could you
6 please repeat that.

7 BY MR. FARRELL:

8 Q. Yeah. When I read this, it
9 seems to indicate that a wholesale
10 distributor should watch the average
11 purchase by a customer over time, and if
12 that average is exceeded, it should be
13 deemed suspicious. Is that a fair
14 reading of this provision?

15 MR. FINKELSTEIN: Object to
16 the characterization.

17 MS. MAINIGI: Object to
18 form. Calls for a legal
19 conclusion.

20 THE WITNESS: Well, I think
21 it also includes that it has to
22 look at the other registrants in
23 that area. It's not just the
24 registrant that's ordering, but

1 it's also comparing against the
2 other registrants in that area.

3 BY MR. FARRELL:

4 Q. So if you take an average of
5 the registrants in the area and you
6 calculate that, if a customer exceeds
7 that average, is that a red flag for a
8 wholesale distributor that the order may
9 be suspicious?

10 MS. MAINIGI: Objection.
11 Calls for speculation. Objection
12 to form.

13 THE WITNESS: Yes.

14 BY MR. FARRELL:

15 Q. And is that consistent with
16 the directives the DEA has given to
17 registrants since at least 1996?

18 MS. MAINIGI: Objection to
19 form.

20 THE WITNESS: Yes.

21 BY MR. FARRELL:

22 Q. The next sentence, would you
23 read, please.

24 A. I forgot where I stopped.

1 Q. "This activity."

2 A. "This activity, over
3 extended periods of time, would lead a
4 reasonable person to believe that
5 controlled substances possibly are being
6 diverted.

7 Q. Now, so what I'm asking you
8 is, when you read this, is it fair to
9 assume that this is consistent with the
10 DEA's guidance to industry since at least
11 1996?

12 MR. FINKELSTEIN: Objection.
13 Vague.

14 MS. MAINIGI: Objection to
15 form.

16 THE WITNESS: Yes.

17 BY MR. FARRELL:

18 Q. Would you read the next
19 sentence, please.

20 A. "An investigation will be
21 conducted for possible violation of the
22 CSA and regulations upon determining that
23 the reporting registrant, as a general
24 practice, does not voluntarily halt

1 shipments of controlled substances to
2 registrants involved in suspected
3 diversion or to registrants against whom
4 previous action has been taken."

5 Q. Is this consistent with the
6 guidance provided by the DEA to
7 registrants since at least 1996?

8 A. Yes.

9 MS. MAINIGI: Objection to
10 form.

11 BY MR. FARRELL:

12 Q. This last sentence that you
13 read contains a statement that "a
14 registrant shall not ship a suspicious
15 order." Is that a fair reading?

16 MR. FINKELSTEIN: Objection.

17 MR. EPPICH: Objection to
18 form.

19 MR. FINKELSTEIN: Object to
20 the form.

21 BY MR. FARRELL:

22 Q. Strike that. I'll ask it
23 again.

24 Based upon this 1996